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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,379	01/26/2006	Michael Neumann	2003P01109WOUS	2098
46726 7590 05/03/2010 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562				
EXAMINER				
GALLEGO, ANDRES F				
ART UNIT		PAPER NUMBER		
3637				
NOTIFICATION DATE		DELIVERY MODE		
05/03/2010		ELECTRONIC		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/566,379
Filing Date: January 26, 2006
Appellant(s): NEUMANN, MICHAEL

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/29/10 appealing from the Office action mailed 1/6/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 8-21.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on most of the summary of claimed subject matter contained in the brief, however, Examiner notes that for claim 15, the Appellant's citation of Page 3, Line 12, an Page 1, Lines 8-16 regarding a ceramic material does not provide adequate support for a "non-glass ceramic material" as stated in the claim.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6113206	Melson et al.	9-2000
5179045	Aitken et al.	1-1993
6165590	Tagaki et al.	12-2000

Nancy E. Berry, "Kitchen Classics", The Period Arts Fan Company: Old House Online Journal, Copyright 2009
<http://www.oldhousejournal.com/Kitchen_Classics/magazine/1362>

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 16, and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Though the Appellant has submitted remarks specifying that the ceramic material being claimed is to be non-glass ceramic, the specification has not properly identified this limitation as an existing

characteristic of the ceramic material, or what particular kinds of non-ceramic material are in question, and is therefore considered as being non-enabling and improperly claimed new matter and will be interpreted broadly by the examiner. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Melson et al. (US 6113206).

Regarding claim 8, Melson discloses a cooling device (1) comprising an inner chamber (see annotated Figure 1) provided with at least one placement device (see annotated Figure 1), said placement device includes a shelf area (3) made of a ceramic material (Figure 1; Column 3 Lines 55-62 and Column 4 Lines 26-30). The placement device in Melson's cooling device is inherently capable of supporting items to be placed thereon such as food, and the examiner takes the position that food is an intended use which is given no patentable weight.

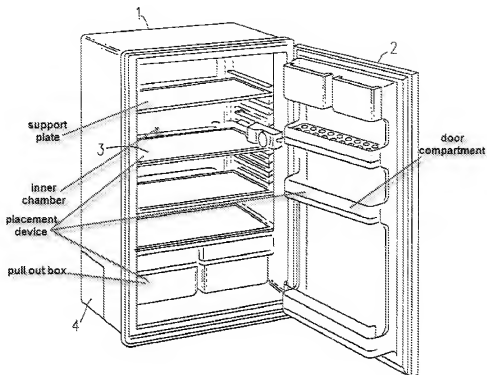


FIG. 1

Melson et al. (US 8113206) - Figure 1

Regarding claim 9, the claim is a product by process claim and the placement device (see annotated Figure 1) does not depend on the process of making it. The product-by-process limitation "fabricated in one piece" would not be expected to impart distinctive structural characteristics to the placement device. Therefore, the claimed placement device is not a different and unobvious placement device from Melson. It is noted that Melson's placement device is a one-piece shelf.

Regarding claim 10, Melson discloses the cooling device (1) including said placement device (see annotated Figure 1) constructed as at least one of a support

plate (see annotated Figure 1), a door compartment (see annotated Figure 1), or as a pull out box (see annotated Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Aitken (US 5179045).

Regarding claim 11, Melson discloses the claimed invention except for a shelf area containing pigments. Aitken teaches a ceramic material containing a pigment as shown in Column 3 Lines 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material used to make the shelf area of Melson by providing the ceramic material with a color package, as taught by Aitken, since such a modification, based on user preferences, would allow ceramic material to have color.

Regarding claim 14, Melson discloses the claimed invention except for at least two of said placement devices each differently colored. Aitken teaches differently colored ceramic material as shown in Column 3 Lines 10-13, 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the placement devices of Melson to have

differently colored ceramic material as taught by Aitken, since such a modification would allow for the shelf area to have a more visually appealing display.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Tagaki et al. (US 6165590).

Regarding claim 12, Melson discloses the claimed invention except for said ceramic material provided with a glaze. Tagaki teaches a ceramic material provided with a glaze as shown in Column 1 Lines 7-15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a ceramic material capable of receiving a glaze as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 13, Melson discloses the claimed invention except for at least one set of pigments being added to said glaze. Tagaki teaches at least one set of pigments added to a glaze as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a ceramic material capable of receiving a glaze with pigment added to it as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Non-Patent Literature "The Period Arts Fan Company" and in further view of Tagaki.

Regarding claim 15, Melson discloses a cooling device (1) comprising an inner chamber (see annotated Figure 1) provided with at least two placement devices (see annotated Figure 1), a first one of said placement devices formed as a support plate (see annotated Figure 1) including a shelf area (3), and a second one of said placement devices formed as a pull-out box (see annotated Figure 1) (Column 3 Lines 55-62). The placement device in Melson's cooling device is inherently capable of being for items to be placed such as food, and the examiner takes the position that it is an intended use which is given no patentable weight. Examiner takes official notice that it would be obvious to one of ordinary skill in the art to consider the inside bottom surface of a pull-out box to be a shelf area.

Melson does not disclose said support plate, shelf area, and pull-out box shelf area made of a non-glass ceramic material. The Period Arts Fan Co. teaches that refrigerators in the early 1900's contained shelving comprised of porcelain, a type of non-glass ceramic, as shown in Paragraph 1 of the "Cool News" section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a porcelain, non-glass ceramic material as taught by The Period Arts Fan Co., since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 16, the claim is a product by process claim and the two placement device (see annotated Figure 1) do not depend on the process of making it. The product-by-process limitation "fabricated in one piece" would not be expected to impart distinctive structural characteristics to the placement device. Therefore, the

claimed placement device is not a different and unobvious placement device from Melson, modified by The Period Arts Fan Co. It is noted that Melson's placement device is a one-piece shelf.

Regarding claim 17, Melson, modified by The Period Arts Fan Co., discloses the cooling device (1) including a third placement device constructed as at least one of a door compartment (see annotated Figure 1).

Regarding claim 18, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for said shelf areas containing pigments. Tagaki teaches a ceramic material containing a pigment as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period Arts Fan Co., by adding to the ceramic material, a glaze with pigment as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 19, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for said non-glass ceramic material provided with a glaze. Tagaki teaches a ceramic material provided with a glaze as shown in Column 1 Lines 7-15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period Arts Fan Co., by adding to the ceramic material a glaze as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 20, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for at least one set of pigments being added to said glaze.

Tagaki teaches at least one set of pigments added to a glaze as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period Arts Fan Co., by adding to the ceramic material, a glaze with pigment as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of The Period Arts Fan Co. and Tagaki et al., and in further view of Aitken

Melson, modified by The Period Arts Fan Co. and Tagaki, discloses the claimed invention except for at least two of said placement devices each differently colored. Aitken teaches differently colored ceramic material as shown in Column 3 Lines 10-13, 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the placement devices of Melson, modified by The Period Arts Fan Co. and Tagaki, to have differently colored ceramic material as taught by Aitken, since such a modification would allow for the shelf area to have a more visually appealing display.

(10) Response to Argument

A. Claims 15, 16, and 19 are rejected under 34 USC 112, 1st paragraph as claiming subject matter Appellant was not in possession of at the time of filing.

In response to Appellant's arguments against the 35 USC 112 1st Paragraph rejection for claims 15, 16, and 19, in which the Appellant submits "that those of ordinary skill in the art would readily appreciate that a non-glass ceramic material is

intended/inherent in the description" of a ceramic material, the Examiner holds that a ceramic material is not inherently a non-glass ceramic, since it is well known in the art that not all ceramics necessarily are non-glass.

As stated in the final office action, in no part of the specification does the Appellant make mention of a glass ceramic or non-glass ceramic material, but instead cites the disadvantages of using plastic, glass, and/or metal in the cited Page 1 Lines 8-14 and 30-34. The language of the claims, supported by the specification, only stated that a ceramic material would be used, and the examiner interpreted this limitation as such. Additionally, after Appellant's arguments regarding glass being a raw material in the production of porcelain, examiner holds that glass, though commonly used in making porcelain, is not an exclusive or required ingredient to its production. As stated by the Appellant, other non-glass materials such as mullite, feldspar and granite may be used.

B. Claims 8-10 anticipated by Melson

In response to the Appellant's arguments against the 35 USC 102(b) rejection for claims 8-10, in which the Appellant that the Melson reference is limited to a glass material shelf because the Melson reference describes the refrigerator shelf as being made of "glass or glass ceramic", the Examiner holds that it is well known in the art that glass is not the same as a glass ceramic. It is noted that the features upon which Appellant relies (i.e., that glass ceramic is distinguishable from a ceramic material, and that glass *ceramic* is susceptible to fracture by impact) are not recited in the rejected

claim(s). Because the claim only limits the shelf to a ceramic material, examiner has interpreted the glass ceramic used in Melson to be a type of ceramic material. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the Appellant's additional arguments against the 35 USC 102(b) rejection for claims 8-10, in which it is stated that the Appellant is entitled to be his own lexicographer, and that "it would be clear to those of ordinary skill in the art that reference to "ceramic material" in view of the specification is necessarily distinguishable from the glass or glass ceramic disclosed in the Melson patent", the Examiner holds that the Examiner is allowed to take the commonly known meaning of "ceramic material" when interpreting the claim language. Further, for consideration of the alternate meaning for "ceramic material", the Appellant should have presented the personalized definition in the original specification filed with the application making express the definition that ceramic material for purposes of this application refers to non-glass ceramics. While Appellant may narrow the scope of his claimed invention after seeing the prior art, Appellant may not redefine his invention to exclude the prior art unless he can demonstrate possession of such invention on filing. Appellant has not.

C. Claims 11 and 14 are obvious over Melson view of Aitken

No separate argument is provided. As stated in the final, Appellant's arguments for claims 11 and 14 that the Aitken patent does not correct the deficiencies noted with

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regard to Melson are not found persuasive. Aitken clearly indicates in Column 4, Lines 27-35 that glass colorants may be added to a glass batch before being crystallized into a glass ceramic state, this particular mixture achieving a burgundy color.

D. Claims 12 and 13 are obvious over Melson in view of Tagaki

No separate argument is provided.

E. Claims 15-20 are obvious over Melson in view of "The Period Arts Fan Company" and Tagaki

In response to the Appellant's arguments against the 35 USC 103(a) rejection for claims 15-20, in which the Appellant disagrees that porcelain is a type of non-glass ceramic material, the Examiner holds that porcelain is not limited to being made by glass materials. As stated by the Appellant, "Porcelain starts with a pale clay such as china white, which has small, tight grains that are further ground so that they are even. Materials like glass, feldspar, and granite are ground with the clay before water is added to the mixture so that it can be worked", which implies that even though glass is a common ingredient used in the production of porcelain, glass is not an exclusive requirement for its production.

F. Claims 21 is obvious over Melson in view of "The Period Arts Fan Company", Tagaki and Aitken

No separate argument is provided.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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/ANDRES GALLEGO/

Examiner, Art Unit 3637

/Darnell M Jayne/

Supervisory Patent Examiner, Art Unit 3637

Conferees:

Janet Wilkens/JW/

Darnell Jayne /dj/